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February 6, 1997

VIA FEDERAL EXPRESS

William Caton, Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

RE: The Bell Atlantic Telephone Companies Offer of Comparable Efficient Interconnection to Payphone Service Providers
CC Docket No. 96-128

Dear Secretary:

Enclosed for filing please find the original and six copies of Joint Comments and Objections of the Central Atlantic Payphone Association, the New Jersey Payphone Association, the New Jersey Payphone Group and the Atlantic Payphone Association to Bell Atlantic's CEI Plan in the above-referenced matter.

If you have any questions or concerns regarding this matter, feel free to contact the undersigned at your convenience.

Respectfully submitted,

Alan Kohler

Alan Kohler
For WOLF, BLOCK, SCHORR and SOLIS-COHEN

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of the	:	
Implementation of the Pay Telephone	:	
Reclassification and Compensation	:	
Provisions of the Telecommunications	:	
Act of 1996	:	
	:	CC Docket No. 96-128
The Bell Atlantic Telephone Companies	:	
Offer of Comparably Efficient	:	
Interconnection to Payphone Service	:	
Providers	:	

JOINT COMMENTS AND OBJECTIONS OF THE CENTRAL ATLANTIC PAYPHONE ASSOCIATION, THE NEW JERSEY PAYPHONE ASSOCIATION, THE NEW JERSEY PAYPHONE GROUP AND THE ATLANTIC PAYPHONE ASSOCIATION TO BELL ATLANTIC'S CEI PLAN

The Central Atlantic Payphone Association ("CAPA"), the New Jersey Payphone Association ("NJPA"), the New Jersey Payphone Group ("NJPG"), and the Atlantic Payphone Association ("APA")[1] (jointly referred to as "the Payphone Associations") file these joint comments in opposition to the Plan filed by the Bell Atlantic telephone companies with the Commission on January 7, 1997 to offer

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1 CAPA represents the interests of various independent payphone providers in the Commonwealth of Pennsylvania. NJPA and NJPG both represent the interests of various independent payphone providers in the state of New Jersey. The Atlantic Payphone Association represents the interests of various payphone providers in the Commonwealth of Virginia.

comparably efficient interconnection to independent payphone service providers in its service territories ("CEI Plan"). The member independent payphone providers of CAPA, NJPA, NJPG and APA represent member independent payphone providers which own and operate payphones in the Bell Atlantic region. Each member will be greatly affected by the Commission's implementation of Section 276 of the Telecommunications Act of 1996 and have an acute interest in the promise that Section 276 provides to finally "even the playing field" and curtail the continuing monopolistic activities of Bell Atlantic in various payphone markets in its region.

For all of the reasons set forth in these comments, the Payphone Associations request that the Commission reject Bell Atlantic's CEI Plan as a completely transparent effort to fulfil the Commission's CEI Plan filing requirement in nonsubstantive fashion without modifying its historic and continuing discriminatory treatment of independent payphone providers.

I. INTRODUCTION

Passage of the Telecommunications Act of 1996 ("Act") provided great promise to independent payphone providers around the country that the days of competing against large monopolies which owned and used to their unfair advantage the "bottleneck" facilities necessary to the provision of payphone services was coming to an end. Section 276 of the Act promised the implementation of safeguards on Bell operating companies ("BOCs") to assure the elimination of prior discriminatory practices which had impeded the full development of the payphone market.

The clear intent of Section 276 is to assure that the small to medium sized businesses which operate as independent payphone providers have the opportunity to compete fairly with the BOC's payphone subsidiary or payphone division providing some protection against the unfair use of the monopoly power of the entire Bell operating company which owns and operates the local exchange network. If given the opportunity promised by the Act , the Payphone Associations are confident of the ability of their members to compete effectively and in doing so to bring the full benefits of competition — higher quality services at lower prices — to payphone users in Pennsylvania, New Jersey and Virginia. However, it is clear to the Payphone Associations that Bell Atlantic will make every attempt to maintain the status quo and that absent active and continuing oversight of Bell Atlantic's activities, the intended objections of Section 276 will not be realized.

The Commission has taken important steps forward in implementation of Section 276 through issuance of its two payphone orders.[2] However, the implementation process necessary to achieve Congressional objectives has just begun. The instant CEI Plan filed by Bell Atlantic represents a perfect example of the obstructionist practices which Bell Atlantic will employ in order to preclude the Act's intended implementation and this Commission's actions in furtherance of Congressional intent.

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[2] In the Matter of Implementation of the Pay Telephone Classification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket Nos. 96-128, 91-35. Report and Order (September 20, 1996) Order on Reconsideration (November 8, 1996).

In its payphone Orders, the Commission adopted Computer III [3] safeguards and procedures to assure that historic discriminatory practices by Bell be eliminated and required the filing of a CEI Plan by each regional BOC which describes "how it intends to comply with the CEI equal access parameters and non-structured safeguards for the provision of payphone services."[4] The purpose of the filing of a CEI Plan was to allow the Commission to "evaluate the application of the nondiscrimination and cross subsidy nonstructural safeguards to the provision of payphone services by each BOC."[5]

In response, Bell Atlantic has not filed a "plan" which will allow the Commission to evaluate whether the requirements of Section 276 will be implemented, but instead has filed what amounts to a "compliance affidavit" and simply acknowledges that it will comply, which does nothing more than acknowledge that Bell Atlantic's attorneys read the Commission's payphone orders. Most troubling is not what Bell Atlantic says in its CEI Plan but what it does not say — how it plans to eliminate its historic discriminatory treatment of independent payphone providers.[6] Accordingly, the Payphone Associations' primary objection to Bell Atlantic's Plan is that it is not a plan

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3 Amendment of Section 64.702 of the Commission's Rules and Regulations ("Computer III"), CC Docket No. 85-229 (associated administrative and judicial citations omitted).

4 Report and Order, ¶ 202.

5 Order on Reconsideration, ¶ 220.

6 Worse yet is the possibility that Bell Atlantic simply has no plans to comply with Section 276 and the Commission's payphone orders and that absent further Commission intervention Bell Atlantic intends to continue to conduct business as if Section 276 was never enacted.

and does not provide adequate information for meaningful evaluation or comment by independent payphone providers and this Commission.

However, combined with tariffs which have been filed with state commissions, it is clear that Bell Atlantic's true plan is to attempt to secure increased competitive advantage for its payphone divisions. It intends to accomplish this in some states, like Pennsylvania, by developing an unbundling and pricing scheme for its transmission services which results in lower rates for coin lines that only Bell Atlantic can utilize and by continuing to charge exorbitant rates (in some cases almost twice the rates it charges itself) for lines and service features that it is well aware are almost universally purchased by independent payphone providers ("IPPs").

In other states like New Jersey, where more comparable (at least as it appears on the surface)yet still discriminatory pricing is provided, the prices are not cost-based and are so high as to place IPPs in an extremely difficult competitive position. For example in New Jersey Bell Atlantic charges IPPs $17.50 for a lesser line than the line it charges itself $12.40 for across the river in Pennsylvania.

Furthermore, Bell Atlantic has recently filed tariffs in Pennsylvania which, as explained herein, IPPs cannot use, but if they could would result in rate uniformity for coin calls eliminating the pricing competition which Section 276 intended to stimulate. Such anti-competitive actions should not be tolerated by the Commission.

These facts lead to the conclusion that, left to its own devises, Bell Atlantic will attempt to take the pro-competitive objectives of Section 276 and warp them into a distortion which actually increases the competitive advantage it has enjoyed for years.[7] Only with the Commission's intervention at this time and continued oversight of Bell Atlantic's activities can this result be avoided and the objectives of Section 276 be implemented as intended by Congress.

II. DISCUSSION

A. The Commission's Adoption of Computer III Safeguards and Procedures Was Intended to Achieve Meaningful Reform of RBOC Anti-Competitive Behavior.

The Commission is well aware that, undeterred, monopolies will typically engage in anti-competitive behavior and discriminate against entities which have no choice but to purchase the monopoly's service and service elements to compete.[8] This incentive to engage in anti-competitive and discriminatory behavior is equally relevant in the payphone market.[9]

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7 All this at the same time that Bell Atlantic is making a plea to commence collection of payphone compensation.

8 "[W]e [the Commission] believe that incumbent LECs have little incentive to provision unbundled elements in a manner that would provide efficient competitors with a meaningful opportunity to compete. We are also cognizant of the fact that incumbent LECs have the incentive and the ability to engage in many kinds of discrimination." First Report and Order, In the Matter of Implementation of the Local Competition Provisions int he Telecommunications Act of 1996, CC Docket No. 96-98 (August 8, 1996), ¶ 307.

9 "Because incumbent LECs may have an incentive to charge their competitors unreasonably high prices for these services we conclude that the new services test is necessary to ensure that central office coin services are priced reasonably." Report and Order ¶ 146.

Given these incentives to impede Section 276 implementation on the part of BOCs, the Commission, as required by 276, adopted Computer III safeguards and procedures and required the filing of CEI Plans to assure that reforms were being implemented which would eliminate historic anti-competitive and discriminatory practices. Contrary to Bell Atlantic's apparent view, the Computer III safeguards are not an "empty vessel" but instead if implemented properly, should provide meaningful and effective controls of BOC behavior in the marketplace.

The standard adopted by the Commission in Computer III is "equal access": — that being that LEC facilities necessary for competition to provide a given service be made available on the same terms and conditions to all market participants including the LEC itself. As the Commission stated in its Computer III, Phase I Order:

> We find that this equal access standard for CEI will best serve the public interest for several reasons. An equal access standard most clearly advances our policy that basic facilities be available on the same terms to all participants in the enhanced services marketplace. We have long recognized that the basic network is a unique national resource, and our policies have been designed to promote nondiscriminatory utilization of that resource's capabilities. The structural separation requirements sought to achieve this goal by physically and organizationally separating the carrier's enhanced services subsidiary from its basic operations. In essence, this separation placed the subsidiary and all other enhanced service providers on an equal relationship with the carrier's basic operations. As we have noted, a byproduct of this arrangement was the foreclosure of possible efficiencies from integrating enhanced and basic operations. In adopting an equal access standard for CEI while removing structural

separation, we will best preserve our nondiscriminatory policies while promoting efficiency.[10]

Accordingly, as in the enhanced service area, the Commission has refrained from requiring structural separation of BOC payphone operations. But, the non-structural Computer III safeguards are not only intended to provide meaningful protections, but are intended to be as effective as structural safeguards in deterring anti-competitive behavior pertaining to both availability and pricing issues.

The Commission has reiterated its intent that payphone CEI Plans safeguards be subject to the same level of effectiveness and scrutiny as has been applied in the enhanced services area.[11] Bell Atlantic, however, has provided no information which would allow the Commission to reach a meaningful conclusion that Bell Atlantic's service and service features it provides to itself and its payphone competitors are cost based, nondiscriminatory or provided on an unbundled basis.

Instead, Bell Atlantic takes a "trust us on this one" approach and has treated this CEI Plan obligation as if it were a reporting requirement rather than a plan designed to assure the non-structural safeguards equal in effectiveness to actual structural separation in deterring anti-competitive behavior. Bell Atlantic's CEI Plan should be rejected by the Commission for this reason alone.

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10 104 FCC 2d 958 at ¶148.

11 "The tariffs for these LEC payphone services must be: (1) cost based; (2) consistent with the requirement of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory." Order on Reconsideration, ¶163.

B. All Of Bell Atlantic's Rates Charged Itself and Its Payphone Competitors Must Be Identical and Cost-Based.

One of the fundamental protections of Computer III is that under a CEI all of the rates charged by Bell to both itself and its competition must be cost based.[12] The objective of the cost- based pricing standard is not only to preclude cross-subsidization but to assure that competitors pay the same rates for the same service functions as Bell charges itself.[13] The Computer III cost-based rate standard applies to distance-sensitive costs, basic service operation or interconnection costs[14] and communications and signaling or network usage costs.[15] Overall, under a CEI standard, all rates for services and service functions must be cost-based and the LEC and its competitors must pay the same rate for the same service.

The Commission has reiterated Computer III's cost-based rate standard in its payphone orders in which it stated as follows:

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12 In Computer III, the Commission expressly rejected a "price averaging" approach in favor of "cost-based" pricing. Phase I Order, ¶172.

13 "However, we also find that all enhanced service providers including the carrier, should pay an equal charge covering the costs of operating the interconnection facilities and providing the unbundled basic services utilized by all enhanced service providers." Phase I Order, ¶172.

14 "We require all enhanced service providers, including the carrier's enhanced service operation to pay identical rates to the carrier's basic service operation . . . ." (Emphasis added.) Phase 1 Order, ¶178. Basic service operations or interconnection in the enhanced service area are the equivalent of basic payphone service in the payphone area.

15 "We require both the carrier's enhanced services operations and those of competition to be charged standard tariffed rates for such communication and signaling services." Phase 1 Order, ¶184. Communications and signaling or network usage in the enhanced service area are the equivalent of local usage in the payphone area.

> Because incumbent LECs may have an incentive to charge their competitors unreasonably high prices for these services we conclude that the new services test is necessary to ensure that central office coin services are priced reasonably.[16]
>
> * * *
>
> The tariffs for these LEC payphone services must be: (1) cost based; (2) consistent with the requirement of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory. [17]

Possibly, the most amazing thing about Bell Atlantic's CEI Plan is that it does not even claim or allege that the rates it proposes to charge itself or the rates it charges independent payphone providers are cost-based — as will be explained below with good reason.[18] While it is true that the Commission has designated state commissions to review central office coin service ("COCS") tariffs, it is also true that Bell Atlantic has recently filed COCS tariffs in Pennsylvania and New Jersey with absolutely no cost support.[19]

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16 Report and Order ¶ 146.

17 Order on Reconsideration, ¶163.

18 Although Bell Atlantic claims in passing that the charges are nondiscriminatory, as will be explained hereafter, Bell has carefully devised a scheme which allows it to charge itself a much lower rate than it charges its competitors.

19 On January 15, 1997, Bell Atlantic filed tariff supplements with both the Pennsylvania and New Jersey Commissions in order to comply with the directive in the Commission's payphone order to tariff its central office coin services. Report and Order ¶146. A true and correct copy of Bell Atlantic's COCS tariff filing in Pennsylvania is attached hereto as Exhibit "A." A true and correct copy of Bell Atlantic's COCS tariff filing in New Jersey is attached hereto as Exhibit "B.".

Furthermore, although the Commission's payphone orders require tariffs to be filed with the Commission governing all unbundled features and functions, Bell Atlantic has completely ignored this tariffing requirement.[20] Finally, as described in its CEI Plan, Bell Atlantic has maintained dialtone line and unbundled feature tariffs in both Pennsylvania and New Jersey for IPPs (or as Bell Atlantic describes it, for "smart payphones") which have been in effect for over a decade.[21] What Bell Atlantic has not told the Commission is that the IPP tariffs and the rates contained therein were never reviewed by either state commission to determine if those rates were or are cost-based.[22]

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20 "In addition, as required by the Report and Order, any basic network services or unbundled features used by a LEC's operations to provide payphone services must be similarly available to independent payphone providers on a nondiscriminatory, tariffed basis. Those unbundled features or functions must be tariffed <u>in the state and federal jurisdiction</u>. Federal tariffing of unbundled network features is consistent with Computer III and ONA. The Commission has also required, for example, federal tariffing of originating line access services." (emphasis added, footnote omitted.) Order on Reconsideration, ¶ 162. Furthermore, LECs, including Bell Atlantic, were required to file federal unbundled feature tariffs by no later than January 15, 1997. To the best of the knowledge of the Payphone Providers, Bell Atlantic ignored this request. As described below, one of Bell Atlantic's primary tools of engaging in anti-competitive behavior is to make IPPs pay exorbitant prices for unbundled features which are far from cost-based and result in serious discrimination.

21 In Pennsylvania, IPPs are required to purchase service from the basic single business line tariff ("B-1"). A copy of the New Jersey IPP tariff is attached to Bell Atlantic's CEI Plan.

22 It may be Bell Atlantic's view that the rates in its IPP tariffs are not required to be cost-based because the Commission's cost-based standard is only applicable to the COCS tariffs filed with state commissions on January 15, 1997. Such a view, if held by Bell Atlantic, is patently absurd. As explained previously, both the Commission's payphone orders, and even more clearly, Computer III, require that all rates for services an service features used by the carrier **or its competitors** be cost-based.

In view of the foregoing, it is clear that Bell Atlantic is attempting to avoid any review of whether the rates in its two payphone tariffs are cost-based by playing a game of jurisdictional "hide and seek." Bell Atlantic has ignored its obligation to file federal tariffs and cost support with this Commission under the apparent claim that these issues are more appropriately addressed by the state commissions. Where Bell Atlantic has filed tariffs at the state level, the tariffs have been filed without any cost support and Bell Atlantic is likely to take the position that the reasonableness and structure of these tariffs has been resolved at the federal level.

Bell Atlantic's strategy is particularly clear in New Jersey where it has taken the position that its COCS offering is a competitive service under NJSA 48:2.21-19(a). The result of competitive service designation under New Jersey law is that the service's prices are deregulated. As part of Bell Atlantic's claim for competitive service classification of its COCS offering, it is also claiming that because COCS is a competitive service, it does not have to provide cost support to the New Jersey Board thus relieving it from any regulatory review of whether it is complying with the cost-based rate standard.

The Commission should address this scenario by requiring Bell Atlantic to file tariffs **and** supporting cost studies for all of the service and service features used by <u>itself and IPP's</u> with either a state commission or this Commission (or both), as prescribed in the payphone orders. Only through such tariff submissions, and careful state and federal agency review of Bell's cost studies, can either the state commissions or this

Commission determine that the rates contained in its COCS and IPP tariffs are consistent with the cost-based rate standard of both the Commission's payphone orders, Computer III and Section 276 of the Act.

C. Bell Atlantic's COCS Tariffs Includes a Call Rating Feature Which Imposes Uniform Rates on IPPs.

Bell Atlantic's bundled COCS line in both Pennsylvania and New Jersey not only includes service and service features which IPP's desire to purchase, like the dialtone line, incoming/outgoing operator screening and touch tone, but also a service which they have no desire to purchase as currently offered and which is anti-competitive — call rating. While when properly designed, a call rating feature can provide a valuable service function, the call rating feature offered by Bell Atlantic does nothing more than require IPPs to charge Bell's prices and eliminates the pricing flexibility necessary to full development of a competitive market. The result of requiring IPPs to purchase Bell Atlantic's call rating feature is that any IPP which purchases service under Bell Atlantic's COCS tariff has no choice but to permit Bell Atlantic to determine the end-user rate on all coin calls originating from the IPP's payphones.[23]

This becomes a critical issue as it pertains to local coin calls, since as a result of implementation of Section 276, local coin call prices will be deregulated in the

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[23] It seems obvious that, if nothing else, this practice deters development of the payphone market by precluding price competition between marketplace participants by requiring competitors which purchase the COCS service to charge the same prices. Accordingly, Bell Atlantic's proposal actually erects a barrier to accomplishment of the Congressional objectives the Commission is attempting to implement.

near future. Requiring as a condition of service under the COCS tariff that IPPs purchase Bell Atlantic's call rating will result in uniform local, coin rates for all COCS subscribers and will preclude the price competition that Section 276 intends to stimulate.[24]

The same requirement of price uniformity is imposed for intraLATA calls placed from the payphones of COCS subscribers. Furthermore, an IPP which purchases service from the COCS tariff may have no choice but to presubscribe its payphones 0+ and 1+ intraLATA service to Bell Atlantic.[25] Such a restriction not only is another deterrent to marketplace development, but is intended to protect Bell Atlantic's revenue stream from independent competitive pressures.[26]

If separate 0+ presubscription is not permitted, Bell Atlantic's proposal would also discriminate against IPPs which might utilize the COCS tariff by precluding

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24 Although unclear in the tariff, Bell Atlantic representatives have informed CAPA members that the call rating feature requires the rating of all coin calls including the initial local coin charge at Bell's prices. However, to the extent Bell Atlantic's call rating feature allows the IPP to determine the amount to be charged in the initial coin drop, it still precludes the COCS subscriber from developing pricing options based on the duration of the call which can be utilized to provide more attractive prices to meet the needs of consumers.

25 The COCS tariff only specifically addresses a requirement that sent-paid intraLATA service be presubscribed to Bell Atlantic. However, the tariff does not provide that 0+ traffic can be presubscribed to other carriers. Furthermore, it appears that state commission implementation of intraLATA presubscription in Pennsylvania and New Jersey may preclude presubscription to two intraLATA carriers. In such a case, the practical effect is that all intraLATA services under the COCS tariff must be presubscribed to Bell Atlantic.

26 In this regard, the proposal is also anti-competitive as it relates to interexchange carriers which desire to provide intraLATA service to IPP payphones. By no coincidence, Bell Atlantic makes this proposal at a time in which both Pennsylvania and New Jersey are in the midst of conversion to presubscription competition in the intraLATA market.

IPPs from going to the IXC market for the most attractive arrangement pertaining to transmission of intraLATA traffic from its payphones. With the advent of intraLATA dialing parity, IXCs will offer a wide variety of service options to IPPs for both intraLATA and interLATA traffic. Accordingly, the effect of Bell Atlantic's tariff is to establish itself as the "only game in town" for IPPs desiring to utilize the COCS tariff — restricting the IPP's from purchasing the lowest priced underlying service for its customers and guaranteeing revenue streams to Bell Atlantic.

Under such a scenario, the COCS tariff proposed by Bell Atlantic cannot be utilized by IPPs without sacrificing the pricing flexibility intended by Section 276 and required for full development of a competitive market. Absent the pricing flexibility Bell provides to itself (total pricing flexibility), the interconnection provided IPPs under the COCS tariff is not comparable and should be rejected. Accordingly, the Commission should defer approval of a CEI Plan for Bell Atlantic until such time as it includes a call rating feature which allows the IPP to determine all of the prices it charges end-user customers.[27]

D. The State Tariffs Demonstrate the Discriminatory Treatment Which Will Result from Bell Atlantic's CEI Plan.

As explained previously, the most troubling aspect of Bell Atlantic's CEI Plan is not what it does say but what it does not say. To fully understand the anti-

[27] Other BOCs offer coin lines which include a call rating feature which allows IPPs to price all of the service rated by the BOC (e.g. Ameritech's "profitmaster" service offering).

competitive impact of the CEI Plan, particularly as it relates to the prices IPPs will be required to pay Bell Atlantic as compared to the prices it will pay itself, it is necessary to compare the rates proposed or contained in the relevant tariffs. Because the Pennsylvania and New Jersey tariffs have significant substantive differences, it is necessary to discuss the situation in each state individually.

1. Pennsylvania

In Pennsylvania, Bell Atlantic has historically offered IPPs service through its IPP tariff attached as Exhibit "C" hereto. The IPP tariff is an unbundled tariff which prices the dialtone line separately from other available features. The IPP tariff has been in effect for over a decade.

Furthermore, on January 15, 1997, Bell Atlantic filed a COCS Tariff making its CCOS line available to third parties. As explained previously and addressed in more detail below, there are reasons why the vast majority of CAPA members will not be able to utilize Bell Atlantic's bundled COCS tariff and, without FCC intervention, will be required to continue to purchase service from its IPP tariff. The comparable non-traffic sensitive prices which are included in the two service offerings are summarized below:

COCS TARIFF		**IPP TARIFF**	
Features Included	**Monthly Charge for Two Way Service**[28]	**Features Included**	**Monthly Charge for Two Way Service**
Dialtone; Incoming/ Outgoing Operator Screening; Coin Recognition; Call Rating; Answer Supervision;	$12.40[29]	Dialtone	$6.40
		Features Not Included	**Monthly Charge for Features not Included**
		Touchtone Operator Screening Answer Supervision[30]	$1.77 $5.00 $1.65
TOTAL CHARGE:	**$12.40**		**$14.82**

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28 Under Pennsylvania law, all payphones must be two-way except in "extraordinary circumstances." 66 Pa.C.S. § 2913(a). In order to be exempt from this statutory requirement, a payphone provider must secure the express approval of the Pennsylvania Public Utility Commission ("PaPUC"). 52 Pa. Code § 63.96. Historically, the PaPUC has only approved one-way service requests if A payphone is shown to be used for drug trafficking and has been identified by local police as a public nuisance.

29 The dialtone rates for both the COCS and IPP tariffs are for Bell's urban density cell and most active payphone markets in Philadelphia and Pittsburgh. Bell's dialtone rate is higher in the suburban and rural areas of the state. Under the IPP tariff the unbundled dialtone rates range from $6.40 up to $16 per month. Under the COCS tariff, in each of the four density cells, the bundled line rate is $6 more than the unbundled IPP tariff rate.

30 Bell Atlantic only offers answer supervision in a limited number of central offices and does not offer answer supervision in its most competitive payphone markets in Philadelphia and Pittsburgh.

Because many of the available features are provided internally by the "smart payphones" operated by CAPA members, most CAPA members only purchase dialtone, touchtone and screening service and service features.[31] A comparison of the rates for a package of these services under COCS tariff and the IPP tariff follows:

COCS Tariff	**IPP Tariff**
$12.40	$13.17

Accordingly, the practical result of implementation of Bell Atlantic's CEI Plan is that it will charge IPP's rates significantly higher than the rates it charges itself for the services it utilizes to provide its own competitive payphone service. Furthermore, the COCS line provides many additional features which are not available in the IPP tariff. Clearly, such disparate prices do not comply with the requirements of Section 276, Computer III and the Commission's payphone orders that the BOC and its competitors "should pay an equal charge" for the same or equivalent services and service features.

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31 The $5.00 monthly screening charge is particularly outrageous. Bell Atlantic is well aware that the screening service is purchased by virtually all IPPs. Although as indicated previously, Bell Atlantic has not filed cost studies with either this Commission or the PaPUC, it is likely that the incremental cost of providing the screening service is de minimis. The fact that the $5.00 rate is completely arbitrary and is not even remotely cost-based (the incremental cost is likely to be well below one dollar) is evidenced by the fact that Bell charges only $1.50 for the same screening services in New Jersey.

However, the discriminatory nature of the tariffs does not stop here and is enhanced by the relevant usage charges. A comparison between the usage charges in the two tariffs follows:[32]

	COCS Tariff		**IPP Tariff**
Flat Rate	$15.95[33]		N/A
Measured Usage	N/A[34]		$ .07 per message
		Standard Package:	$ 6.90 for $8 usage allowance
		Usage Options:	$ 9.20 for $12 usage allowance
			$13.80 for $18 usage allowance
			$18.40 for $24 usage allowance[35]
			(.07 per message after allowance)

CAPA has surveyed its urban members and has concluded that under the IPP tariff these members pay an average usage charge of $31.76 per month for the transmission of local traffic — almost two times the $15.95 flat usage rate that Bell

32 In its COCS tariff, Bell Atlantic indicates that payphones utilizing the COCS tariff will be transferred to the measured usage rate schedule utilized in the IPP tariff as soon as "a measured line for [its] coin operated telephones is technically feasible. However, Bell Atlantic has provided no plan or estimate, much less a commitment, for when this switchover will occur. Logically, one can presume that the switchover will be later rather than sooner since, as explained below, Bell Atlantic has no incentive to implement the switchover in that if permitted it will enjoy a huge competitive advantage in the meantime.

33 As compared to the average monthly charge CAPA members pay for local usage, the $15.95 flat rate usage charge Bell proposes to charge itself is blatantly discriminatory. In contrast, in New Jersey, Bell Atlantic included a flat rate usage charge of $40 in its COCS tariff.

34 IPPs are precluded from utilizing the flat usage rate included in the COCS tariff with the IPP tariff line.

35 Only one of the three usage options is available in the area served by each central office.

Atlantic proposes to charge to itself. Overall, the rates Bell Atlantic will charge itself, as compared to the rates it will charge average CAPA payphone on a monthly basis are as follows:

	Average Bell Atlantic Pay Phone	Average CAPA Payphone
Line & Features	$12.40	$13.17
Usage	$15.95	$31.76
	$28.35	$44.93

In total, Bell Atlantic will charge the average independent payphone provider almost 60% per month, per phone more than it will charge itself. Even more amazing is the fact that Bell Atlantic is apparently claiming that **both** the COCS tariff and the IPP tariff rates are cost-based. Overall, if Bell Atlantic's CEI Plan is approved, not only will Bell Atlantic - Pennsylvania be charging its competitors different and higher rates than it charges itself, in violation of Section 276, Computer III and the Commission's payphone orders, but the disparity in rates will result in such a level of discriminatory treatment that the development of fair and meaningful competition in Pennsylvania's payphone markets will be an impossibility.

2. New Jersey

Like Pennsylvania, in New Jersey, Bell Atlantic has historically offered IPPs service through its IPP tariff. The IPP tariff in New Jersey is also an unbundled tariff. Other features are available to the IPP at retail prices.

Bell Atlantic's COCS tariff, filed with the New Jersey Board on January 15, 1997, makes its COCS line available to third parties, including IPPs. As in Pennsylvania, there are technical (incompatible answer supervision) and business reasons (required rate uniformity) why the vast majority of NJPA and NJPG members will not be able to utilize Bell Atlantic's bundled COCS tariff and will be required to continue to purchase service from its IPP tariff.

However, while in New Jersey, Bell Atlantic has not priced its basic payphone services in a manner which appears to be as discriminatory on its face as in Pennsylvania, its prices are not cost-based and are exorbitant. The Joint Commenters acknowledge that for the services typically purchased by members of the NJPA and the NJPG (dialtone, touchtone and screening), Bell Atlantic's prices under its IPP tariff are more comparable on their face to the prices it has proposed to charge itself, however, the prices are still discriminatory since the IPP line purchased includes less service features.[36]

Bell Atlantic's New Jersey tariff suffers from another fault. The prices are simply exorbitant and cannot reasonably be claimed to be cost-based. This is

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[36] The prices are still discriminatory since Bell Atlantic includes features like call rating, answer supervision and coin recognition in the service it provides to itself which features NJPA and NJPG members have no use for as they are currently offered. In New Jersey, IPPs presently are charged $17.50 for an unbundled dialtone line, $1.50 for screening and $2.01 for touchtone (Total of $21.01), while under its COCS tariff, Bell Atlantic proposes to charge itself $22.82 for a bundled full feature line. If New Jersey IPPs were able to purchase, through the IPP tariff, all of the features Bell Atlantic provides itself, the charge would likely be much higher than the COCS tariff rate. Likewise, if Bell Atlantic were to deduct the portion of its COCS price ($22.82) attributed to features other than the dialtone line, the resulting price would be significantly less than the $17.50 it charges its competitors.

demonstrated by the fact that the New Jersey line charge ($17.50) in the IPP tariff is nearly 175% higher than the rate charged in some parts of Pennsylvania and significantly more than the rates charged in Pennsylvania's most rural areas[37] — which apparently Bell Atlantic believes are cost-based.[38] Clearly, the New Jersey prices must be reduced significantly in order to achieve the cost-based prices mandated by Section 276.

The fact that the disparity between New Jersey and Pennsylvania prices is completely arbitrary is demonstrated by reference to proxy rates calculated by the Commission for LEC network elements in these states in its local interconnection proceedings. The cost-based proxy rates for local loops in New Jersey is $12.47. The cost-based proxy rates for local loops in Pennsylvania Is $12.30.[39] Although it is true that

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37 The local usage rates in the IPP tariff in New Jersey are close to identical to the usage rates in the IPP tariff in Pennsylvania referenced above.

38 Although Bell Atlantic's costs vary from state to state, it is virtually inconceivable that such disparate prices are justified by underlying costs. At best, the price disparity indicates that Bell Atlantic's prices in Pennsylvania and New Jersey are completely arbitrary — arbitrary pricing being a luxury historically enjoyed by monopolies. However, Section 276 mandates that Bell Atlantic's historic pricing practices be eliminated and that cost-based pricing be the rule. Otherwise, truly competitive payphone markets will never develop. Nevertheless, in its CEI Plan Bell Atlantic has chosen to maintain its IPP tariffs and the arbitrary pricing contained in those tariffs on file with various state commissions. This is the exact reason why this Commission **must** be active in reviewing the prices Bell charges its competitors to assure that they are cost-based.

39 47 C.F.R. §51.513(a).

LEC costs vary based on geography, it is clear from the Commission's proxies that the existing disparity between Pennsylvania and New Jersey rates is completely arbitrary.[40]

E. The CEI Plan Provides No Safeguards for Assuring that the Payphone Subsidy is Eliminated.

In addition to eliminating Bell's discriminatory treatment of IPP's, Section 276 is also intended to eliminate the subsidy to Bell's payphone services contributed to by telephone exchange service operations and exchange access operations. In its payphone orders, the Commission emphasized that the purpose of the CEI Plan was to implement non-structured safeguards which "will provide an appropriate regulatory framework, to ensure that BOCs do not discriminate or cross-subsidize in the provision of payphone service."

Instead of proposing such non-structural safeguards in its CEI Plan, Bell does not identify or support how it will calculate the subsidy amount. In fact, Bell does not even disclose to the Commission what it believes to be the quantification of the subsidy amount in the various states in its region.

Under such a scenario, the Commission simply has no way to evaluate what non-structural safeguards are planned or whether those safeguards will be meaningful and

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40 Reference to the Commission's proxy rates also demonstrates that neither the Pennsylvania nor New Jersey rates are cost-based. As indicated above, New Jersey and Pennsylvania IPPs pay on average between $40 and $50 a month for local phone service (plus some features with nominal incremental costs). These rates are three to four times the proxy loop rates adopted by the Commission. As the Commission is aware, loop costs constitute a significant majority of costs incurred by LECs in providing local service including usage.

effective in eliminating cross-subsidization. Stated differently, Bell Atlantic has not provided enough information in its CEI Plan for the Commission to even guess whether Bell Atlantic's so-called plan will provide any assurance that the historic subsidy to its payphone operations will be eliminated.

If its recently filed state tariffs are any indication, Bell Atlantic will not fulfill its Section 276 obligations as required, but will implement the Commission's payphone orders in such a way as to do nothing more than protect its competitive interests. It is for these reasons that the Joint Commenters request that the Commission require Bell Atlantic to make full disclosure of all aspects and details of its plans to implement Section 276 and to withhold CEI Plan approval until the Commission is fully informed and fully satisfied that the non-structural safeguards implemented by Bell Atlantic will be fully effective in assuring compliance with Section 276.

F. The Vast Majority of IPPs Cannot Use Bell Atlantic's Bundled Central Office Coin Service Offering.

In its Order on Reconsideration, the Commission summarized the unbundling requirement imposed on Bell which governs the submission of COCS tariffs to state commissions as follows:

> Accordingly, as required in the Report and Order, LECs must provide tariffed, nondiscriminatory basic payphone services that enable independent providers to offer payphone services using either instrument-implemented "smart payphones" or "dumb" payphones that utilize central office coin services, or some combination of the two in a manner similar to the LEC.